

good standing, under the laws of the state or other political subdivision of the United States in which the savings association's or holding company's principal office is located;

(2) Agrees in the engagement letter to provide the OTS with access to and copies of any work papers, policies, and procedures relating to the services performed;

(3)(i) Is in compliance with the American Institute of Certified Public Accountants' (AICPA) Code of Professional Conduct; and

(ii) Meets the independence requirements and interpretations of the Securities and Exchange Commission and its staff; and

(4) Has received, or is enrolled in, a peer review program that meets guidelines acceptable to the OTS.

(e) *Voluntary audits.* When a savings association, savings and loan holding company, or affiliate (as defined by 12 CFR 563.41) obtains an independent audit voluntarily, it must be performed by an independent public accountant who satisfies the requirements of paragraphs (d)(1), (d)(2), and (d)(3)(i) of this section.

[59 FR 60304, Nov. 23, 1994, as amended at 62 FR 3780, Jan. 27, 1997; 66 FR 13007, Mar. 2, 2001; 67 FR 70531, Nov. 25, 2002; 67 FR 77917, December 20, 2002]

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SOURCE: 54 FR 49552, Nov. 30, 1989, unless otherwise noted.

### Subpart A—Accounts

#### § 563.1 Chartering documents.

(a) *Submission for approval.* Any *de novo* savings association prior to commencing operations shall file its charter and bylaws with the OTS for approval, together with a certification that such charter and bylaws are permissible under all applicable laws, rules and regulations.

(b) *Availability of chartering documents.* Each savings association shall cause a true copy of its charter and bylaws and all amendments thereto to be available to accountholders at all times in each office of the savings association, and shall upon request deliver to any accountholders a copy of such charter and bylaws or amendments thereto.

[57 FR 14344, Apr. 20, 1992]

#### § 563.4 [Reserved]

#### § 563.5 Securities: Statement of non-insurance.

Every security issued by a savings association must include in its provisions a clear statement that the security is not insured by the Federal Deposit Insurance Corporation.

### Subpart B—Operation and Structure

#### § 563.22 Merger, consolidation, purchase or sale of assets, or assumption of liabilities.

(a) No savings association may, without application to and approval by the Office:

(1) Combine with any insured depository institution, if the acquiring or resulting institution is to be a savings association; or

(2) Assume liability to pay any deposit made in, any insured depository institution.

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(b)(1) No savings association may, without notifying the Office, as provided in paragraph (h)(1) of this section:

(i) Combine with another insured depository institution where a savings association is not the resulting institution; or

(ii) In the case of a savings association that meets the conditions for expedited treatment under § 516.5 of this chapter, convert, directly or indirectly, to a national or state bank.

(2) A savings association that does not meet the conditions for expedited treatment under § 516.5 of this chapter may not, directly or indirectly, convert to a national or state bank without prior application to and approval of OTS, as provided in paragraph (h)(2)(ii) of this section.

(c) No savings association may make any transfer (excluding transfers subject to paragraphs (a) or (b) of this section) without notice or application to the Office, as provided in paragraph (h)(2) of this section. For purposes of this paragraph, the term “transfer” means purchases or sales of assets or liabilities in bulk not made in the ordinary course of business including, but not limited to, transfers of assets or savings account liabilities, purchases of assets, and assumptions of deposit accounts or other liabilities, and combinations with a depository institution other than an insured depository institution.

(d)(1) In determining whether to confer approval for a transaction under paragraphs (a), (b)(2), or (c) of this section, the Office shall take into account the following:

(i) The capital level of any resulting savings association;

(ii) The financial and managerial resources of the constituent institutions;

(iii) The future prospects of the constituent institutions;

(iv) The convenience and needs of the communities to be served;

(v) The conformity of the transaction to applicable law, regulation, and supervisory policies;

(vi) Factors relating to the fairness of and disclosure concerning the transaction, including, but not limited to: